

### REMARKS

Claims 7-10 and 23-58 are pending in this application upon entry of this amendment. Claims 7 and 38 are independent claims.

Claim 10 has been amended to correct an inadvertent dependency error by which it originally depended from claim 9, but now correctly depends from claim 8.

New claim 58 was added to define a construct according to claim 7 having all of the characteristics of the most specifically elected species set forth in the Previous Response. No new matter has been added by the inclusion of claim 58, since there is support for the subject matter of claim 58 in the application as filed, for example at paragraphs [0053] to [0055] and [0057]. Accordingly, entry of claim 58 is respectfully solicited.

### SUPPLEMENTAL RESPONSE TO RESTRICTION REQUIREMENT

In the Communication of February 24, 2004, the Examiner pointed out that Applicants did not specifically point out which of then newly presented claims 23-57 read on the specifically elected species having the characteristics set forth in the Previous Response. Applicants in good faith, through their undersigned attorney, believed and still believe that all of the claims 7 and 23-57 were generic or subgeneric to the elected species as set forth in the Previous Response.

Applicants and the undersigned attorney appreciate the clarification provided to the undersigned attorney in a telephone interview with the Examiner of March 4, 2004, concerning the outstanding Communication. During the interview, the undersigned attorney understood the Examiner to require identification of which claims specifically recite any of the four elected characteristics set forth in the Previous Response, namely:

- (1) Five tandemly repeated codons;
- (2) The tandemly repeated codons are located immediately upstream of the reporter polynucleotide;
- (3) At least one spacer codon is interposed between a pair of tandemly repeated codons; and
- (4) The spacer codon is alanine.

Based on this understanding, the following table identifies claims as generic (designated in the table as "G"), where a claim includes, but does not specifically recite one or

more specific characteristic, and identifies claims that specifically recite the parenthetically indicated characteristic identified above. By way of explanation, for example with reference to the table entries for claims 24 and 25, for claim 24, the entry "S (1), G (2-4)" means that claim 24 defines a construct that is specific with respect to characteristic (1) above, but is generic with respect to characteristics (2) through (4) above; and for claim 25, the entry "Not S (1), G (2-4)" means that claim 25 defines a construct that is not specific with respect to characteristic (1) above, but is generic with respect to characteristics (2) through (4) above.

Claim No.	Characteristic		Claim No.	Characteristic
7	G		39	G
8	G		40	G
9	G		41	G
10	G		42	G
23	G		43	G
24	S (1), G (2-4)		44	S (1), G (2-4)
25	Not S (1), G (2-4)		45	Not S (1), G (2-4)
26	Not S (1), G (2-4)		46	Not S (1), G (2-4)
27	G		47	G
28	S (2), G (1, 3 & 4)		48	S (2), G (1, 3 & 4)
29	G		49	G
30	S (3), G (1, 2 & 4)		50	S (3), G (1, 2 & 4)
31	G		51	G
32	S (3), G (1, 2 & 4)		52	S (3), G (1, 2 & 4)
33	S (4), G (1-3)		53	S (4), G (1-3)
34	S (3 & 4), G (1 & 2)		54	S (3 & 4), G (1 & 2)
35	G		55	G
36	G		56	G
37	G		57	G
38	G		58	S (1-4)

Applicants believe that the foregoing table fully identifies which claims define an invention specific to the species with the elected characteristics and which claims are generic.

A prompt examination and Notice of Allowance with respect to claims 7-10 and 23-58 are respectfully solicited.

If the Examiner has any questions or wishes to discuss any aspect of this paper or the application, the Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

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(Date)

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